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FM AIT TAIPEI
TO RUEHC/SECSTATE WASHDC PRIORITY 9510
INFO RUEHOO/CHINA POSTS COLLECTIVE
RUEHBK/AMEMBASSY BANGKOK 4288
RUEHBY/AMEMBASSY CANBERRA 4964
RUEHML/AMEMBASSY MANILA 0550
RUEHGP/AMEMBASSY SINGAPORE 7372
RUEHKO/AMEMBASSY TOKYO 0082
RUEHWL/AMEMBASSY WELLINGTON 2179
RUEHCHI/AMCONSUL CHIANG MAI 0455
RUEHHM/AMCONSUL HO CHI MINH CITY 0297
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC

UNCLAS SECTION 01 OF 02 TAIPEI 001039

SIPDIS

STATE FOR EAP/TC
STATE PASS USTR FOR KATZ AND RAGLAND, COMMERCE FOR
4431/ITA/MAC/AP/OPB/TAIWAN, COMMERCE ALSO FOR ITA/MAC/OIPR,
COMMERCE PASS TO USPTO GIN, BROWNING, AND LOC STEPP, USDOJ
FOR JOHN ZACHARIA

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PREL](#) [PGOV](#) [TW](#)

SUBJECT: TAIWAN IPR: 301 WATCH LIST OCR PROCESS UPDATE TWO

REF: A. SECSTATE 43143

[B](#). TAIPEI 950

[C](#). TAIPEI 745

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[1](#). (SBU) Summary: Due in part to a recent compromise between local rights-holder groups and the Taiwan Intellectual Property Office (TIPO) on draft language for internet service provider (ISP) amendments to Taiwan's Copyright Act, Taiwan is now making progress on all three areas outlined in May's Special 301 Watch List submission for Taiwan (ref A). TIPO continues to predict that it will pass the final draft of the amendment to the Executive Yuan (EY) in August at the earliest, though September is now a possibility. The Ministry of Education (MOE) continues to engage with rights-holder groups, and may consider their request that the MOE allow the Taiwan authorities to treat the Ministry's island-wide TANet system as an ISP under the Taiwan Copyright Act. As reported in reftel B, the Intellectual Property (IP) Court opened as scheduled on July 1. End summary.

Compromise Reached on ISP Bill

[2](#). (SBU) The original version of the draft ISP amendment included language in Article 88 explicitly stating that ISP operators could be subject to secondary liability for hosting IP-infringing material. Rights-holder groups were happy with this language, which they saw as necessary to give the proposed legislation teeth, but ISP operators had objected, and their objections were delaying progress on finalizing the draft amendment (ref C). In response to a May 26 request by the Ministry of Economic Affairs (MOEA), on July 4, the Ministry of Justice (MOJ) formally submitted a written opinion stating that ISP operators are subject to secondary liability ("contributory infringement") under Article 185 of the Taiwan Civil Code, and that language related to secondary liability in Article 88 was therefore not necessary. As expected, TIPO used the MOJ opinion to justify deleting the concept of secondary liability from Article 88.

[3](#). (SBU) On July 7, TIPO Copyright Department Director Chang

Yu-ying met with ISP operators, rights-owner groups, and other experts to hear their opinions about this new version of proposed ISP-related amendments to the Copyright Act. At the meeting--and despite earlier rights-holder opposition to ISP attempts to remove Article 88 from the draft--rights-holder groups did not object to the new language. According to our local rights-holder contacts, they dropped their opposition after an earlier, private meeting with TIPO Deputy Director Margaret Chen, during which the groups agreed to accept the new version in exchange for several other changes favorable to rights-holders. These changes include stricter notification requirements, as well as language requesting ISPs to use rights-holder-provided content-filtering mechanisms. According to Robin Lee, CEO of the recording-industry rights-holder group IFPI, rights-holder groups are also confident that after TIPO submits the bill to the LY, KMT Legislator Hseih Kuo-liang will add language related to secondary liability back into the amendment.

MOE Campus Action Plan Continues

¶4. (SBU) During a July 10 meeting with Economic Chief, Ministry of Education Computer Center Director Yang Cheng-hong noted that his office met in the spring with eleven representatives of the Taiwan Intellectual Property Association (TIPA) and promised to review their suspected copyright infringement cases regarding the Taiwan Academic Network (TANet), for which the Computer Center is responsible. Yang added that later this month his office will counsel ten universities that have recorded increasing numbers of TANet infringements.

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¶5. (SBU) During the same meeting, Vice Minister of Education Lu Mu-lin reported that implementation of the Campus Action Plan is going well, and that the MOE will share updated enforcement statistics with AIT in the near future. Lu mentioned that MOE will soon strengthen the standard IP questionnaire students must complete before initial access to TANet. In response to rights-holder requests and AIT advocacy in favor of including TANet in draft ISP legislation, Lu said the MOE is now preparing draft language for interagency discussion that would clarify that TANet should be covered under the proposed ISP amendments, though he acknowledged opposition within the MOE may derail such a change.

¶6. (SBU) Comment: In anticipation of an eventual out-of-cycle review, we assess that Taiwan has made measurable progress on the three key areas outlined by the U.S. in this year's Special 301 Watch List submission for Taiwan. We will be watching to see how effectively the new IP Court handles cases, and we will continue to monitor Taiwan's implementation of its Campus IP Action Plan. The main issue will now be Taiwan's progress toward passing an acceptable version of the ISP amendment, and though rights-holders appear satisfied with the current language, we will continue to follow its progress from TIPO to the EY and LY.
YOUNG